

MONTANA LEGISLATIVE HISTORY

Chapter 327 1981

Bill H 12 S _____

Original bill & history / c

H. Committee on Judiciary

Hearing Date(s) 1/8 / c

2/19 / c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 2/8 / c

3/24 / c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes / No

Committee _____

Report _____

HB 10—KEEDY, NORDTVEDT, ROTH, ET AL—TO GENERALLY REVISE SENTENCING LAWS.

FISCAL NOTE: REQUIRED

PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/30/80

HEARING: 1/9

REPORT: DO PASS AS AMENDED, 1/21

2ND READING: 1/24, YEAS: 69; NAYS: 27

3RD READING: 1/26, YEAS: 67; NAYS: 30

TRANSMITTED TO SENATE: 1/26

REFERRED TO COMMITTEE ON JUDICIARY: 1/27

HEARING: 2/10

BILL DIED IN COMMITTEE

HB 11—SPILKER—TO ALLOW WORK PERIODS OTHER THAN 40 HOURS A WEEK TO BE ESTABLISHED BY COLLECTIVE BARGAINING....

PREFILED AND REFERRED TO COMMITTEE ON LABOR: 12/30/80

HEARING: 1/8

REPORT: DO PASS AS AMENDED, 1/15

2ND READING: 1/19, YEAS: 84; NAYS: 9

3RD READING: 1/20, YEAS: 89; NAYS: 9

TRANSMITTED TO SENATE: 1/20

REFERRED TO COMMITTEE ON LABOR AND EMPLOYMENT: 1/21

HEARING: 2/3

REPORT: 3/9, BE CONCURRED IN AS AMENDED

2ND READING: 3/10, YEAS: 25; NAYS: 21

3RD READING: 3/12, YEAS: 16; NAYS: 34

BILL KILLED ON 3RD READING: 3/12

HB 12—GOULD—TO PROVIDE FOR INCREASED PUNISHMENT OF PERSONS WHO HAVE BEEN CONVICTED OF THREE SEPARATE FELONIES.

PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/30/80

HEARING: 1/9

REPORT: DO PASS AS AMENDED, 2/19

2ND READING: 2/21, YEAS: 79; NAYS: 7

3RD READING: 2/24, YEAS: 94; NAYS: 4

TRANSMITTED TO SENATE: 2/24

REFERRED TO COMMITTEE ON JUDICIARY: 3/2

HEARING: 3/9

REPORT: 3/25, BE CONCURRED IN

2ND READING: 3/27, BE CONCURRED IN

3RD READING: 3/31, YEAS: 50

RETURNED TO HOUSE: 3/31

TRANSMITTED TO GOVERNOR: 4/6

ACTION: SIGNED, 4/9

CHAPTER 327

HB 13—FABREGA—TO ALLOW THE DEPARTMENT OF REVENUE TO WAIVE INTEREST UPON DELINQUENT TAXES AND PENALTIES IN CERTAIN CASES.

PREFILED AND REFERRED TO COMMITTEE ON TAXATION: 12/30/80

HEARING: 1/9

REPORT: DO PASS, 1/15

2ND READING: 1/17, YEAS: 87; NAYS: 0

3RD READING: 1/19, YEAS: 94; NAYS: 0

TRANSMITTED TO SENATE: 1/19

REFERRED TO COMMITTEE ON TAXATION: 1/20

1 HOUSE BILL NO. 12
2 INTRODUCED BY GOULD
3 BY REQUEST OF THE INTERIM COMMITTEE ON CORRECTIONS
4 POLICY AND FACILITY NEEDS
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
7 INCREASED PUNISHMENT OF PERSONS WHO HAVE BEEN CONVICTED OF
8 THREE SEPARATE FELONIES; AMENDING SECTIONS 46-18-222 AND
9 46-18-502, MCA."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Section 46-18-502, MCA, is amended to read:
13 "46-18-502. Sentencing of persistent felony offender.
14 (1) A Except as provided in subsection (2), a persistent
15 felony offender shall be imprisoned in the state prison for
16 a term of not less than 5 years or more than 100 years if he
17 was 21 years of age or older at the time of the commission
18 of the present offense.
19 (2) If the offender was a persistent felony offender,
20 as defined in 46-18-501, at the time of his previous felony
21 conviction, less than 5 years have elapsed between his
22 previous felony conviction and the commission of the present
23 offense, and he was 21 years of age or older at the time of
24 the commission of the present offense, he shall be
25 imprisoned in the state prison for a term of not less than

1 10 years or more than 100 years.
2 ~~(2)~~(3) Except as provided in 46-18-222, the imposition
3 or execution of the first 5 years of a sentence imposed
4 under subsection (1) or the first 10 years of a sentence
5 imposed under subsection (2) may not be deferred or
6 suspended."
7 Section 2. Section 46-18-222, MCA, is amended to read:
8 "46-18-222. Exceptions to mandatory minimum sentences
9 and restrictions on deferred imposition and suspended
10 execution of sentence. All mandatory minimum sentences
11 prescribed by the laws of this state and the restrictions on
12 deferred imposition and suspended execution of sentence
13 prescribed by subsections (3) and (4) of 46-18-201,
14 46-18-221(3), and 46-18-502~~(2)~~(3) do not apply if:
15 (1) the defendant was less than 18 years of age at the
16 time of the commission of the offense for which he is to be
17 sentenced;
18 (2) the defendant's mental capacity, at the time of the
19 commission of the offense for which he is to be sentenced,
20 was significantly impaired, although not so impaired as to
21 constitute a defense to the prosecution;
22 (3) the defendant, at the time of the commission of the
23 offense for which he is to be sentenced, was acting under
24 unusual and substantial duress, although not such duress as
25 would constitute a defense to the prosecution;

1 (4) the defendant was an accomplice, the conduct
2 constituting the offense was principally the conduct of
3 another, and the defendant's participation was relatively
4 minor; or

5 (5) where applicable, no serious bodily injury was
6 inflicted on the victim unless a weapon was used in the
7 commission of the offense."

-End-

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
January 9, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser presiding. All committee members were present. Jim Lear, attorney of the Legislative Council, was also present.

HOUSE BILL 12 REP. GOULD, chief sponsor of the bill, stated this bill, if passed, would have relatively small effect on prison population. If there was a persistant felony offender, it would make that offender aware he/she would receive a mandatory sentence of a minimum of ten years. This would not jeopardize the person who at a young age had a few problems of one or two felony convictions and then had gone straight for a number of years to suddenly commit another felony. This bill would be strictly for the persistant felony offender.

CURT CHISHOLM, Department of Institutions, did not feel there would be any significant impact on the prison population should this bill be passed. CHISHOLM did not anticipate any major fiscal implementations on the prison. The persistant felony offender must be dealt with and he was in favor of this bill.

There were no other proponents.

There were no opponents.

No questions were asked by committee members.

HOUSE BILL 20 REP. GOULD stated that in 1977 the legislature passed a bill, signed by the Governor, which gave from a two to ten year sentence for a first conviction and a four to twenty year sentence for a second offense, for using a fire arm when committing a felony. This bill makes sure that a sentence is a consecutive and not a concurrent sentence. REP. GOULD implied we should control the criminal and not the gun.

CURT CHISHOLM, Department of Institutions, noted this bill would provide for additional sentences and judges would have certain rules to follow in sentencing a convicted person. There would be no fiscal impact on the prisons or the Department of Institutions of a great demand.

There were no other proponents.

There were no opponents.

CHAIRMAN KEYSER stated all the bills concerning criminal sentencing would be assigned to a sub-committee for research and recommendation.

HOUSE _____ COMMITTEE

Date 1/9/81

SENSOR Gould

LIST of INSTITUTIONS

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Judiciary Committee
February 19, 1981
Page 2

REP. EUDAILY asked who certifies the alcohol counselors. The Department of Institutions will in the budget year of 81-82.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 8:45 a.m.

HOUSE BILL 12 REP. KEEDY moved do pass. The problem with the existing statute is additional sentencing does not run consecutively. REP. KEEDY offered an amendment to require judges to make the sentences run consecutively. The amendment passed unanimously.

REP. EUDAILY felt judges should distinguish between dangerous and nondangerous crimes. REP. KEEDY moved to reconsider the amendment. All were in favor of the motion. After a brief discussion the amendment passed with SHELDEN, HUENNEKENS, YARDLEY, EUDAILY and ABRAMS voting no.

REP. KEEDY moved to amend less than five years have elapsed between the commitment of the present offense and either confinement or the language in 501. After a brief discussion REP. KEEDY changed his amendment to read "and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction". The amendment passed.

REP. HANNAH moved do pass as amended. A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, BENNETT, CONN, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, and KEEDY. Those voting no were: EUDAILY, DAILY, ABRAMS, HUENNEKENS, SHELDEN, TEAGUE and YARDLEY. The bill passed as amended 10 to 7.

HOUSE BILL 20 REP. MCLANE moved do pass.

REP. IVERSON moved following "CONSECUTIVELY" strike "WITH" and insert "TO" in the title and on page 2, line 20. The motion passed unanimously.

REP. MATSKO moved do pass as amended. The motion carried with REP. YARDLEY voting no.

HOUSE BILL 99 REP. DAILY moved do pass.

REP. DAILY moved to amend the bill on page 3, line 6 striking "or execution" and on line 7, and to strike "of imprisonment" on line 7 in the title and throughout the bill. The amendment carried.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 9, 1981

The thirty-eighth meeting of the Senate Judiciary Committee was called to order by Senator Olson, in the absence of Chairman Anderson and Vice Chairman O'Hara, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present except Senator Anderson, who was excused.

CONSIDERATION OF HOUSE BILL 6:

TO ALLOW THE STATE TO REQUEST AN
APPELLATE REVIEW OF THE DISPOSITION
OF A CRIMINAL CASE.

Rep. Keedy presented the bill, describing it as an attempt to balance the scales of justice a little, and saying that it would help to bring about a greater uniformity in sentencing. He asked that a mistake in the bill be corrected by striking "THE ATTORNEY GENERAL" in line 22, page 3, and inserting it in line 23, following "by".

Tom Honzel, representing the County Attorneys Association, said that his group supports the bill because it is fair. He said that Judge Bennett has recommended that something like this be enacted, and has made attempts to draft something himself. Mr. Honzel said that he does not feel there would be any constitutional problem because the state's appeal would be based only on the sentence, and there would therefore be no double jeopardy problem.

Senator Crippen asked if there are statutes in other states that provide this remedy. Rep. Keedy said probably there were not, because a supreme court decision allowing this action is very recent.

CONSIDERATION OF HOUSE BILL 12:

TO PROVIDE FOR INCREASED PUNISHMENT
OF PERSONS WHO HAVE BEEN CONVICTED
OF THREE SEPARATE FELONIES.

Rep. Gould, District 98, Missoula, presented the bill and explained that it more or less came out of HB 10. It is,

he said, an effort to convince an habitual offender that severe punishment awaits him. He added that this bill would not have a very large effect on prison population.

Curt Chisholm, Deputy Director of the Department of Institutions, said that the "persistent felony offender" designation is not used nearly as often by judges as records would indicate it could be, and supported the bill.

Karen Mikota, representing the League of Women Voters, spoke in opposition because the bill does not make a distinction as to when felonies increase from five to ten years. She said that HB 207 deals with the definition of "convicted", and asked that this committee hold off deciding on this bill until the hearing of HB 207.

Senator S. Brown asked Mr. Chisholm why there had been only eight "persistent felony offender" designations made by the courts. Mike Meloy offered the information that in the six years he has been involved in practice under Judge Bennett not a single county attorney has asked for this designation. Mr. Chisholm said that the allowance for this designation was passed in 1975, and then in 1977 the "dangerous" (as opposed to "non-dangerous") designation was made available -- and this latter designation has proven more popular with county attorneys.

Senator Olson asked why the maximum sentence was fixed at one hundred years, and Rep. Gould said that the language was taken from the persistent felon law.

CONSIDERATION OF HOUSE BILL 20:

TO PROVIDE THAT ADDITIONAL SENTENCES
FOR CRIMES COMMITTED WITH A DANGEROUS
WEAPON ARE TO RUN CONSECUTIVELY TO
THE SENTENCE PROVIDED FOR THE OFFENSE.

Rep. Gould presented the bill as an attempt to spell out the language more clearly than it is in the 1977 law. There were no proponents or opponents.

CONSIDERATION OF HOUSE BILL 9:

TO MAKE THE LAW RELATING TO GOOD
TIME ALLOWANCE MORE RESTRICTIVE.

Rep. Yardley, District 74, presented the bill and said that it is not connected with HB 10. He said that he felt some of the "good time" programs designated were biased against some religions. He felt that it was ludicrous to have good time accrue while a prisoner is on probation.

ROLL CALL

JUDICIARY COMMITTEE

#7th LEGISLATIVE SESSION - - 1981

Date March 9, 1981

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)			✓
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: Curt Chisholm DATE: 3/9
60 - 4 del

ADDRESS: Dept Institutions

PHONE: 5930

REPRESENTING WHOM? Industries

APPEARING ON WHICH PROPOSAL: 7.0 15 20

DO YOU: SUPPORT? 12, 20, AMEND? 9 OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE March 9, 1981

COMMITTEE ON JUDICIARY

HB 6

HB 20

HB 9

~~HB-12~~

~~HB-8~~

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
Karen Mikota	League of Women Voters	6		✓
	"	20		
	"	12		
	"	9	✓	
	"	8	✓	
Tom Hensel	County Attorney	6	✓	
Jan Brown	Mt. Zion of Churches			
Ed Hall	Dist. Teachers	89		
		12, 20		

(Please leave unnumbered statement page 2)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
MARCH 24, 1981

The fifty-first meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF HOUSE BILL 316:

Senator Mazurek moved to reconsider the action taken March 14, which resulted in a "be not concurred in" vote. He said that this bill merely puts into law what the practice has been since 1975. His motion carried unanimously. Senator Mazurek then moved that the bill BE CONCURRED IN, and his motion passed over the objection of Senators Tveit and Olson.

DISPOSITION OF HOUSE BILL 66:

Senator B. Brown moved that the bill BE CONCURRED IN, and his motion passed with Senators Anderson, O'Hara, Olson, and Berg opposing, as shown on the attached roll call vote.

DISPOSITION OF HOUSE BILL 273:

Senator Crippen moved to amend the bill as shown on the attached Committee Report, and his motion passed over the objection of Senators O'Hara and S. Brown. Senator Berg moved that the bill BE NOT CONCURRED IN, since the law is presently adequate if enforced, and his motion passed over Senator S. Browne' objection.

DISPOSITION OF HOUSE BILL 403:

Senator S. Brown moved to amend the bill as shown on the attached Committee Report, and his motion passed over Senator Tveit's objection. Senator S. Brown then moved that the bill BE CONCURRED IN AS AMENDED, and the motion carried over the objection of Senators Anderson, Olson, Crippen, and Tveit, as shown on the attached roll call vote.

DISPOSITION OF HOUSE BILL 12:

Senator O'Hara moved that the bill BE CONCURRED IN, and his motion passed over the opposition of Senators Halligan, Mazurek, Crippen, and B. Brown.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 24, 1981

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 24, 1961

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 12

GOULD (O'HARA)

Respectfully report as follows: That HOUSE Bill No. 12

ADDRESS
BE CONCERNED IN